

THE IMPACT OF DIGITAL DELIVERY ON TAXPAYER ASSISTANCE – A NEW ZEALAND PERSPECTIVE

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Abstract

New Zealand, like a number of other jurisdictions, is undertaking unprecedented reform of its tax administration platform. The digitalization of taxation is being facilitated by enhanced technology, expansion of internet accessibility and capabilities, through the extension of high speed broadband, and increased pressures to save cost (the ‘do more with less’ philosophy). New Zealand’s Business Transformation Process (BTP) is the platform for overhauling Inland Revenue’s (IR’s) aging IT systems and making the digital interface the principal mechanism for taxpayer interaction with IR. BTP comes with huge risks, not just in terms of technical complexity, but in failing to provide accessible service engagement mechanisms for all members of society, especially for the ‘digitally challenged’. This paper, through the use of the case study approach, positioned within a taxpayer rights’ perspective, evaluates the risks and challenges of BTP as it enters its most challenging phase, streamlining tax and social policy.

Introduction

Globally the future of tax administration is digital, whether it be the examination of taxpayers’ data or engaging with taxpayers with respect to their tax affairs, both at the jurisdictional level and for taxpayers individually. New Zealand (NZ) is at the forefront of much of this digitalization, being one of the original five members of the Digital 5 (D5) nations, now expanded to the D9. The D9 nations meet regularly to share best practices and key learnings, collaborate on common projects and help each other become even better digital governments faster and more efficiently. The other eight member countries are (those in italics are part of the original D5): Canada, *Estonia*, *Israel*, Mexico, Portugal, *South Korea*, the *United Kingdom (UK)* and Uruguay. The nine principles that the D9 endorse are (NZ Government, 2018, emphasis added):

1. User needs — the design of public services for the citizen
2. Open standards — technology requires interoperability and so a clear commitment to a credible royalty free open standards policy is needed
3. Open source — future Government systems, tradecraft, manuals and standards are created as open source and are shareable between members
4. Open markets — in government procurement create true competition for companies regardless of size. Encourage and support a start-up culture and promote economic growth through open markets
5. Open government (transparency) — be a member of the Open Government Partnership and use open licenses to produce and consume open data
6. *Connectivity — enable an online population through comprehensive and high quality digital infrastructure*
7. Teach children to code — commitment to offer children the opportunity to learn to code and build the next generation of skills
8. *Assisted digital — a commitment to support all its citizens to access digital services*
9. Commitment to share and learn — all members commit to work together to help solve each other's issues wherever they can

Delivery of tax services and administration is a significant activity shared by a number of members of the D9. Digitalization has a wide range of implications, impacting on tax policy and tax administration at both the domestic and international level. It offers new tools while introducing new challenges. Tax policy development and implementation must be designed to operate in a fast changing environment. In the context of this paper, the digitalization of tax also reflects a transformation in Inland Revenue's (IR's) infrastructure, and the way in which it engages with taxpayers and tax agents. As the Institute of Chartered Accountants of England and Wales (ICAEW, 2019, 3) observes:

- Simplicity drives success: the older and more complex a tax system is, the harder it will be to create an understandable and reliable digital equivalent.

- Digital exclusion must not be ignored or underestimated; those that cannot or will not use digital methods must be properly considered and catered for.

This paper takes the form of a case study overviewing NZ's response to its digital delivery of tax administration and assistance via IR through the Business Transformation Process (BTP). The broader context is NZ's overall position with respect to taxpayers' rights. Before embarking on exploring BTP, it provides an overview of NZ's approach to taxpayers' rights, highlighting the relatively minor statutory protection afforded to taxpayers. A key observation is the unequal playing field, emphasized by the lack of meaningful rights for many taxpayers in NZ, especially when taxpayers are challenging the Commissioner of Inland Revenue's (Commissioner's) position. The paper then briefly reviews the reasons behind BTP, including both the need to ensure that IR's IT platform does not fail, and to ensure IR provides sufficient 'support' to taxpayers to enable them to meet their compliance obligations. The paper then focuses on the role of digital assistance, drawing upon experience in the UK, and how this assistance is changing and affecting various groups of taxpayers, especially those that are digitally challenged. Concluding observations will then be offered.

Methodology – case study

This paper applies a tax policy lens to what may be termed a 'traditional' legal perspective. The approach taken is largely positivist, but with some normative suggestions. Furthermore, while there is no specific theoretical framework, an element of institutionalism is applied. Marriott and Holmes (2006, 81, emphasis added; citing Gourevitch, 1986: 61) observe that:

Institutional theory is widely employed in disciplines ranging from history and sociology, through to economics and political science. In its simplest form, *institutional theory may be thought of as a focus on the effects of institutions on political outcomes, such as policy formation*. As organizations or individuals must act through the state (considered as the executive, legislative and judicial functions of government) to attain policy objectives, *the rules and institutions within the state can have a significant impact on outcomes*.

According to Eccleston (2004: 15), a principal focus of institutional theory is the concept of how institutional factors influence the ability of the state to create productive political relationships

with key interest groups. Thus this paper focuses on IR (within the broader NZ Government) as an institution that interacts and shapes the behavior of taxpayers. Taxpayers as a group, are further divided into categories, with the ‘digitally challenged’ (this group including the elderly, disabled, and those without access to reliable broadband), the principal group of interest.

The paper adopts an in-depth exploratory case study approach. It is common to see criticism of case studies as a research method, considered a non-scientific approach to undertaking research. Notwithstanding this view, case study research is utilized extensively in academic enquiry in traditional social science disciplines as well as practice-oriented fields. When adopting a case study approach, the design and analysis considerations are of prime importance, more so often than the description of events or the scenario under review. As Yin (2003) states, the need for a case study arises out of the desire to understand complex social phenomena and allows investigators to retain the holistic and meaningful characteristics of real-life events. The focus in this paper is the BTP being undertaken by IR in NZ as part of modernizing the tax system through ‘digitalizing tax’.

In terms of a research question, the paper seeks to explore a response to: *Is BTP likely to enhance taxpayers’ rights with respect to meeting their obligations and interacting with IR?* Within this context the paper first examines the extent to which this is (adversely) affecting taxpayers’ rights, and creating technical and fiscal risks. It is to the area of taxpayer rights that the paper now turns its focus.

New Zealand’s approach to taxpayers’ rights – an overview

New Zealand is arguably unique amongst developed countries for the absence of a formal constitution and few taxpayer rights legislated for in statute. The Tax Administration Act 1994 (TAA 1994) provides for essential rights such as: secrecy of taxpayer information (s 81), legal professional privilege (s 20) and a limited nondisclosure right (ss 20B – 20G). Taxpayers may challenge the Commissioner’s assessment through a dispute resolution process (Parts 4A and 8A TAA 1994), where some of the component parts are non-legislated. Taxpayers are able to be represented by a tax agent when dealing with their tax affairs (s 34B TAA 1994 sets out the requirements for tax agents). While there is a specific statement of taxpayer obligations in s 15B

TAA 1994 there is no corresponding section summarizing taxpayers' rights. Rather a taxpayer needs to work through the relevant legislation to determine their rights.

Following the Richardson Committee's Review of IR in 1994 (Richardson, 1994), section 6 of the TAA 1994 was amended (emphasis added):

6 Responsibility on Ministers and officials to protect integrity of tax system

(1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their *best endeavors to protect the integrity of the tax system*.

(2) Without limiting its meaning, the integrity of the tax system includes—

(a) taxpayer perceptions of that integrity; and

(b) *the rights of taxpayers to have their liability determined fairly, impartially, and according to law*; and

(c) *the rights of taxpayers to have their individual affairs kept confidential and treated with no greater or lesser favor than the tax affairs of other taxpayers*; and

(d) the responsibilities of taxpayers to comply with the law; and

(e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers; and

(f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

Section 6 TAA 1994 is not justiciable and does not create any enforceable taxpayer rights. It is important to note that this refers to the *tax system* and taxpayers generally, rather than to taxpayers as individuals. Proposals are currently under development within the legislative process to provide a remedy for the Commissioner to deal with a “legislative anomaly” (proposed s 6C TAA 1994). Concerns remain over the scope of this power which has been developed as part of BTP (see for example, Griffiths, 2018). Officials are discussing a full redraft of the provisions currently in proposed sections 6C to 6H to the TAA 1994 with the Legislation Design and Advisory

Committee. Consequently, these proposed powers have been ‘put on hold’ pending a wider review, with revised provisions to be introduced as a Supplementary Order Paper (SOP) added in February 2019 to a tax bill.

IR’s current Charter (IR, 2009), which first emerged in 2001, followed a distressing period where an overly zealous IR was driving a number of taxpayers to despair, including some to committing suicide (Henderson, 1999). IR’s Charter is effectively a Code of Conduct outlining how IR will interact with taxpayers – it contains no new enforceable rights for taxpayers. Taxpayers are described as ‘customers’ accessing the services of IR. Taxpayers may behave like customers when seeking information and making general inquiries, but this is certainly not the case when it comes to disputes. If taxpayers were customers, then the old marketing adage should apply: “The customer is always right”. This ‘claim’ does not always hold, since customers may actually be wrong, or they may be ‘bad for business’, or indeed not be sufficiently expert to form a ‘correct view’. Clearly IR’s Charter largely fails to recognize the situation when a taxpayer has a different view to of IR with respect to their tax affairs, and the ‘customer’ may in fact be right. The commencement point for IR is frequently: we are right, you the taxpayer are wrong, and you must prove we are wrong. This is due to the immensely unfair reverse onus that applies to taxpayers in all civil tax disputes (s 149A TAA 1994).

Leaving the marketing perspective, should we be concerned about the limited relevance of IR’s Charter for taxpayers? This is an issue that I have previously argued is a major concern for taxpayers, since individually they are almost at the complete whim of IR (with the endorsement of the NZ government). Sawyer (1999, 1388-89, footnotes omitted, emphasis added) observes:

To respond to the question posed in the title to this article, I believe that I have made the case that New Zealand taxpayers have been short-changed in comparison with the civil and common law nations reviewed in this article from a legal (formalistic) perspective and, more recently, from an informal point of view. *The absence of a constitution protecting fundamental human rights, promoting only minimalist legal protection of rights through statutory means* (which can be repealed by an ordinary majority of the unicameral Parliament), and the *poor attempt at providing a charter* (the Statement of Principles and the more recent Customer Charter), *all require rectification as soon as possible*. If action is

not taken, the worse-case scenario may eventuate — the rise of a government that ignores and overrides not only fundamental taxpayers’ rights (which are currently provided through administrative enforcement accompanied by some legislative provisions), but also fundamental human rights. *The current legislative environment would facilitate such a government; it is only the political will and the current diversity of political parties under the MMP system that is preventing such tragic circumstances from developing.*

This was the situation in the late 1990s following the revelations of the culture within IR. Has the situation changed (for the good)? Martin (2013) observes that a number of major deficiencies in the NZ tax system remain with respect to taxpayers, namely: limitations in statutory disputes procedures; limitations in availability of judicial review of IR conduct; limits on taxpayers rights generally; uncontrolled IRD discretion; and a parliamentary bias in favor of Inland Revenue. Martin concludes most aptly (2013, 25, emphasis added):

While there is much to admire about the New Zealand tax system the limitations described in this article suggest that *aspects of the current system are out of balance because it does not adequately recognize and protect the rights of individual taxpayers in important areas.* If the great constitutional lawyer Sir Edward Coke were asked to review the position of taxpayer rights relative to the IRD’s rights under the current tax system his response would be “*you need to do much better!*”

Martin is not the last word on taxpayer rights in NZ. Keating (2018, 169, emphasis added) concludes in his assessment of taxpayer rights in NZ against a wider global perspective:

“...New Zealand’s tax administration fails to comply with minimum standards in a number of key respects. While we pride ourselves in the integrity and lack of corruption inherent in our tax system, *we should not be complacent.*

Given these shortcomings, it may be surprising that our system works so well. But most of the failures identified in the [IFA General] Report arise from the *informality of our regime, which requires taxpayers to rely upon the discretion or good graces of Inland Revenue officers to protect their unwritten rights.* Fortunately, in most instances, *this system generally works.* The small size of our tax profession and the churn of individuals working

for private practice and Inland Revenue engenders a level of personal cooperation and trust, and a mutual expectation and desire for the system to function properly. Furthermore, despite delays in access to the courts, an independent judiciary ensures any aberrations of conduct by the Commissioner (or individual officers) are effectively reigned in. Likewise, while much of Inland Revenue's decision-making lacks transparency, most issues of concern to taxpayers or their advisers are nevertheless brought to light at regular conferences or in practitioner or academic papers. *As such, many of the apparent breaches of taxpayer rights identified in the Report are mitigated within our regime.* Other breaches of minimum standards are rare or isolated, or are explicable in their narrow circumstances. Accordingly, while not without its flaws, *New Zealand's tax administration remains robust and is generally recognized as such internationally.*

Keating paints a picture of reliance or trust in IR to act fairly and to rectify 'breaches' of taxpayer rights when they occur. This occurs within an unlevel playing field tilted in favor of IR.

The Tax Working Group (TWG), established in late 2017, made its final report public on 21 February 2019 (TWG, 2019). Amongst the numerous recommendations were several that are most pertinent to protecting taxpayer rights in NZ. Specifically the TWG recommended (TWG, 2019, 102, emphasis added):

“31. The Group also recognises there is a need to improve the resolution of tax disputes. The Group recommends the *establishment of a taxpayer advocacy service to assist taxpayers in disputes with Inland Revenue* and also recommends that the *Office of the Ombudsman be adequately resourced to carry out its functions in relation to tax.*

32. Following the introduction of a taxpayer advocacy service, the Group recommends that the Government design a *truncated tax dispute process for small taxpayers.*”

In developing these recommendations, the Secretariat to the TWG provided a report on the suitability of establishing a tax ombudsman and a tax advocate. The TWG Secretariat (2018, 1, emphasis added) report found:

“Based on a review of other jurisdictions I consider *New Zealand's tax system has fallen well behind current international developments in best practice for taxpayer rights and*

dispute resolution. These failings are jeopardising the procedural fairness of the tax system. They represent a threat to the integrity of the tax system and taxpayers' perception of that integrity."

The TWG Secretariat's (2018, 1-2, emphasis added) recommendations went much further than the TWG, stating:

1. The Ombudsman's office should appoint a *properly resourced deputy ombudsman with sole responsibility for oversight of complaints involving Inland Revenue (IR)*. This would be in line with current best practice developments outside New Zealand.
2. *A clear, accessible and affordable disputes process is integral to the integrity of the tax system.* The present disputes regime is expensive and its cost acts as a bar to smaller taxpayers in particular, prompting the question of whether a taxpayer advocate is required to provide assistance. Furthermore, there has been a very marked fall-off in substantive tax cases appearing in the courts. This fall-off has been the subject of comment from two Supreme Court Justices. If taxpayers feel the disputes process is not available to them then that represents a threat to taxpayers' perception of the integrity of the tax system.
3. This threat can be countered by *simplifying the current disputes process to reduce costs principally by allowing earlier use of IR's Dispute Resolution Unit*. In conjunction with this reform, *IR should establish a Taxpayer Advocate Service (TAS) similar to the Taxpayer Advocate Service run by the United States Internal Revenue Service*.
4. The TAS would have responsibility for *providing assistance to low income earners, small businesses and individuals with English as a second language who are engaged in a dispute with IR over the quantum of tax payable*. Qualifying taxpayers would be able to request assistance from the TAS where the core tax in dispute is under \$50,000.
5. Taxpayers who received assistance from the TAS in relation to a dispute with IR should *retain their existing appeal rights*. The involvement of the TAS would be an integral part of a reformed dispute regime, rather than an adjunct of it as initially suggested.
6. As part of IR's Charter obligations, the *TAS should also adopt the Australian Tax Office's (ATO) Dispute Assist programme*. This would provide assistance to qualifying taxpayers with other issues with IR outside the disputes process such as payment of tax due, repayment of overpaid tax credits, child support and student loans.

7. Although within IR, *the head of the TAS would report directly to Parliament's Finance and Expenditure Committee (FEC)*. We suggest *the head of the TAS is appointed from outside IR*. This should promote the independence of the TAS and therefore boost public confidence in the service.
8. *Consideration should be given into developing the current IR Charter into a formal taxpayers' Bill of Rights similar to that available to taxpayers in the United States*. It appears taxpayer and tax agents' knowledge of the Charter is not widespread. IR should promote taxpayer knowledge of the Charter and its annual report to the FEC should include specific details on its progress in promoting the Charter.

From a taxpayer perspective, these recommendations are both reasonable and desirable to remedy the gradual decline in effective taxpayers' rights. In this respect the US's National Taxpayer Advocate Service (NTAS) is recommended, to which I fully concur. It is also suggested that IR monitor the progress of Curtin University's tax clinic, and initiative being rolled out across Australia (TWG Secretariat, 2018, 12). Overall, these recommendations can be expected to be challenged by IR, and indeed the TWG has failed to give full support to them in its recommendations.

So what can we take away from this discussion? Overall, NZ has a 'poor' history of legislating for taxpayers' rights but rather has focused on administrative statements of 'rights' that are largely unenforceable, placing reliance on a benevolent revenue authority. The tax system is weighted hugely in favor of IR creating an unlevel playing field. Parliament appears to be happy with this position and shows no sign of changing, regardless of whether a government is on the 'left' or 'right' of center. Furthermore, taxpayers have generally not been able to successfully allege breaches of their (human) rights, although cases have often not had 'favorable facts' from the perspective of the taxpayers concerned. The only saving grace is NZ's very low level of corruption and relatively benign public service. The Mixed Member Proportional (MMP) political system has acted as a partial mediator to any further erosion of taxpayers' rights, principally through the role played by minor parties that form part of, or support, a larger party when in government.

Business Transformation – an overview

The context for this paper's review of taxpayer rights in NZ is the BTP, the largest IT project in NZ history, with an expected spend of \$NZ1.6 billion (\$US1.1 billion). BTP is having a significant impact on tax administration and IR's engagement with taxpayers. BTP has four key stages:

- (1) Enabling secure digital platforms;
- (2) Streamlining all tax types;
- (3) Streamlining social policy; and
- (4) Completing a new tax administration system.

Concern continues to remain over the inherent risks and potential for cost blowouts, along with the impact that an online platform will have upon NZ taxpayers. Of particular interest are those taxpayers who do not currently need to interact with IR on a regular basis, as well as those that do not have reliable access via broadband to the internet.

In IR's 2018 Annual Report (Inland Revenue, 2018a, 126, emphasis added), it states:

Business Transformation* is a multiyear, multistage change programme that involves our people, processes, policy and technology. The activities within this appropriation will enable *a modern, digital revenue system* by:

- simplifying policy and legislative settings
- making more intelligent use of information to proactively ensure customers get it right from the start
- *fitting revenue processes seamlessly into people's lives*
- transforming our organizational capabilities
- implementing a modern technology platform (START) that is digitally based and highly automated.

More information is also available on our Business Transformation website, http://www.ird.govt.nz/transformation*.

BTP has, as one of its goals, to save money for IR, its ‘customers’ (namely taxpayers), and NZ as a whole. Furthermore, a fully implemented BTP is intended to make the tax system more certain, and have all of the administration of tax and social policy products moved to new platform. The BTP roadmap is set out in the Appendix to this paper. Earlier in its 2018 Annual Report (Inland Revenue, 2018, 42, emphasis added) IR states:

In 2018–19 we will implement Release 3 of our business transformation and migrate Income Tax and Working for Families Tax Credits entitlements to new systems and processes. This is a significant release as it will affect most New Zealanders. *It is more complex and higher risk than the first two releases, as changes to systems, processes and legislation will affect businesses, individuals and financial institutions. For individual customers, the changes will be the biggest in nearly 20 years.*

The period early January to April 2019 is when IR as part of BTP will complete three rounds of its scaled testing processes, have three mock go-lives, and finalize the closure of priority defects before entering the go-live period (IR, 2018b). Plans for early life support for the new IT platform are in place, should issues arise. From April 2019, BTP overall will be well advanced, with a fundamental shift in how New Zealanders interact with the revenue system (IR 2018c). This will encompass new systems and processes for income tax and Working for Families (WfF), designed with the intention of making tax and payments simpler and more certain. Most taxpayers should pay and receive the right amounts during the year without having to do anything, although they would be advised to check their personal tax account (PTA) – known as MyIR.

Employers, tax agents and intermediaries will also experience change. One group severely affected are the various tax refund organizations as their involvement will be largely superfluous with BTP enabling accurate tax withholdings (by employers and other income payers) and generating automatic refunds. A small role for these organizations may continue to support small businesses and the self-employed where their cost structures enable these organizations to offer competitive priced services. The key portal is MyIR, set up as part of the early stages of BTP, through which taxpayers can access their tax details and interact with IR. For example, through MyIR taxpayers with broadband access can determine whether they are due a refund or not.

IR expects there to be some *disruption* with the ongoing rollout of BTP! Specifically IR states (IR 2018c, 2, emphasis added):

“Once all taxes are migrated to Inland Revenue’s new systems and processes from April 2019, we will have more flexibility to introduce changes to the tax system. We will, however, need to use this flexibility judiciously. *Transformation of the department’s systems and processes will remain high-risk until it is complete in 2021 at which time all of the social policy products that Inland Revenue administers will be managed from new systems.* The benefits of any policy opportunities we want to progress must be weighed against the potential to further increase the risk of, or prolong, transformation.

Other tax reforms continue to add to the scale of BTP, such as the new R&D tax credits mechanism and changes to NZ’s international tax rules due to the OECD’s Base Erosion and Profit Shifting (BEPS) initiative (Sawyer, 2019). Thus BTP has entered a high risk phase, the most significant yet (KPMG 2018). Specifically KPMG states (2018, 6, emphasis added):

In our assessment, the BT team (and the broader organization) are generally doing all that they reasonably could do, but the *level of residual risk is not insignificant (in part because of the significantly increased user-base in Release 3)*. Consequently, it is critical that the Programme controls scope and manages its contingency carefully in remediating pressure on the schedule, and the *Business Readiness Assessment process will also be critical to achieving confidence in the ‘go-live’ readiness; the planning for this is in-hand, but the decision-making landscape will be highly complex.* Furthermore, as IRD have experienced some disruptions in each of the prior releases, we believe it would be prudent for the business to raise the emphasis on business continuity/contingency planning, and the need for some enhanced operational resilience to deal with any potential disruption post Release 3.

BTP is also the major cause for variances in actual spending by IR against its budget. Importantly, all relevant legislative changes necessary to give full effect to BTP are to be completed by 2020 or 2021 at the latest (Power, 2016). Thus, further reforms through BTP are yet to come, with significant laying off of staff scheduled to occur over the new few years as more phases of BTP become operative (James and Sawyer, 2018). James and Sawyer (2018, 20, emphasis added) observe:

“Both revenue authorities will, by the time their new systems are fully operational, have laid off a significant proportion of their staff, especially those that were employed with manual processing tasks and face to face operations with taxpayers. This comes *with numerous risks, including the overall effect on morale.*

ICAEW has stated that the digitalization of tax in the UK (known as *Making Tax Digital* - a similar process in many regards to that in NZ) will affect tax morale. For instance, automated systems may be seen as fairer and less open to corruption, along with making it easier for taxpayers to meet their obligations (ICAEW, 2016). This may increase compliance itself. However, digitalization brings a number of significant risks. In a NZ context, IR acknowledges there are deficiencies and risks. It sets out key principles, with the over-arching one being that the services must be designed for the ‘customer’ (effectively in most instances this is a taxpayer or their tax agent).

IR also acknowledges that the following key principles are important to BTP:

- No one size fits all,
- Tax compliance and access to entitlements are critical, and
- Change will not be imposed without careful consideration of the costs and benefits.

In a sense taxpayers and the general public have had little input into BTP policy overall as BTP is a decision of IR and the NZ government to modernize tax administration in NZ. This position appears to be founded on the basis that BTP is largely apolitical and a necessity in the twenty first century. The one area where taxpayers and others can provide input is through the consultation process with respect to legislative reform. In NZ this is achieved via the generic tax policy process (GTPP) (Sawyer, 2013). Under the GTPP input is permitted at both the policy/discussion document phase and on draft legislation during the parliamentary phase.

Thus in this respect BTP is an excellent example of intuitionism at work – IR and the NZ Government are shaping taxpayers’ lives and choices with little opportunity for external (taxpayer) input. While the overall aims of BTP may be laudable, the approach taken, and the likelihood of failure to provide for all who are digitally challenged, represents a further erosion of taxpayers’ rights.

Recognition of those adversely affected by digitalization appears to have been acknowledged, to the extent where this is within the ‘control’ of IR (for example, access to broadband is beyond IR’s control). However, BTP has yet to fully address how it will accommodate those taxpayers and ‘customers’ of IR, who are either ‘digitally challenged’ or ‘digitally excluded’. This will become more acute within the next year or so when IR’s current FIRST system is ‘switched off’ and social policy is migrated to the BTP platform.

As noted earlier, a key feature within BTP, once fully implemented, is that every taxpayer will have their own PTA (MyIR). Problems are expected to emerge with respect to those taxpayers who have not used PTAs and who may have difficulties in doing so. Such individuals include the digitally challenged and the digitally excluded.

Even without digitalization it is clear there are many taxpayers facing difficulties in interacting with IR. It has become increasingly difficult over the last few years for taxpayers to ask for official help from IR on a face-to-face basis or even by telephone. This is a consequence of IR closing regional and district offices, and a less than effective telephone services where many calls fail to be answered. From IR’s 2018 Annual Report, it states with respect to telephone services (Inland Revenue 2018, p 111, emphasis added):

Not achieved: This year we answered 64% of customer calls within two minutes against the target of 75%. We had some unexpected surges in call demand during the year. For example, *in June, a high number of calls were received from customers experiencing issues with our online services.* To manage the increased number of calls from our customers during our busiest time, we increased our temporary resources and had as many people as possible answering phones. For the year we answered 78% of calls compared to 86% last year.

Thus BTP is in itself contributing to the problems with the telephone service, which is the only effective way to communicate with IR when the digital channels are not functioning. Taxpayers, or customers as IR label them, are not able to access all of the services provided for under IR’s Charter (or Code of Conduct). The implications of BTP for the wider areas of investigations and dispute resolution remains to be seen, including how taxpayers’ (minimal) rights will be affected. Thus much work remains for IR to do for BTP to achieve its aims and in part enhance taxpayers’

rights with respect to ease of engaging with IR (assuming these taxpayers are not digitally challenged). It is the major concern of the digitally challenged that the paper now turns its focus.

Observations – the digitally challenged

A risk that has perhaps been underestimated during BTP are the consequences arising from a lack of personal engagement with taxpayers. Some members of society will see this as an opportunity to work outside the system, while others may not receive the benefits that digitalization can bring. BTP for most individual taxpayers (that is, non-business taxpayers) will minimize their engagement with IR, and where engagement is sought/required, this will be through digital channels (principally MyIR).

In this regard NZ would do well to closely follow and implement a similar project to one being undertaken in the UK. A research project has been conducted to investigate the difficulties faced by older people based on the files of a tax charity known as *Tax Volunteers*, established in 2004. It has close links with the Low Incomes Tax Reform Group (LITRG), a committee of the Chartered Institute of Taxation (CIOT) in the UK. This charity runs *Tax Help* which provides confidential and free expert help and advice for older people on lower incomes. It has over 500 tax volunteers and operates via post, email and a low cost telephone line, as well as conducting face-to-face meetings at local venues and home visits for people unable to travel (Tax Help for Older People, 2018). Specifically *Tax Help* states on their website (emphasis added):

We help some 12,000 new clients each year with their tax problems

- In so doing we deliver about 22,000 individual tax advice sessions
- Of these over 4,000 are face-to-face meetings undertaken by our volunteer advisers
- We save our clients some £1.5M or more each year in tax refunded or written off

But the real impact we make is more difficult to quantify. It is removing the fear, anxiety and burden of constant worry that can only be gauged by the feedback we get from individual clients.

Many of the most frequently raised issues are likely to apply to the wider population, though older people are more likely to suffer major life events which affects their ability to deal with their tax

affairs (for example, bereavement or illness). It is clear from the *Tax Help* files that the UK's equivalent of BTP, *Making Tax Digital* (MTD – HMRC, 2015), will not always be easy for some older taxpayers, and perhaps others, to deal with successfully. While Her Majesty's Revenue and Customs (HMRC) does provide taxpayer assistance, the activities of *Tax Help* suggest it might not be effective in many cases.

To the writer's knowledge, there is no known equivalent to *Tax Help* in NZ, whether as a charitable organization or through any other structure. Various tax refund companies offer to 'extract' refunds from IR for taxpayers for a fee (principally a service offered online) but their life line is to be effectively cut with BTP. Limited guidance is provided through the Citizens Advice Bureau (CAB) who can direct taxpayers to where they can seek assistance.

The Ombudsman is also an avenue for taxpayers but only in limited circumstances. The Ombudsman can investigate complaints about IRD's administrative conduct under the Ombudsmen Act 1975, and IR's decisions on requests for official information under the Official Information Act 1982. The Ombudsman can investigate:

- IR's actions which are related to the manner in which a taxpayer's affairs are managed. For example: delays in responding to correspondence; delays in processing audits; and inadequate standard of service;
- IR's acts or decisions from which there is no right of review or appeal. For example: refusals to remit non-shortfall penalties or interest; refusals to provide remissions or hardship relief; deduction of money from bank accounts; and over-payment of student loan/allowance refunds.

The Ombudsman cannot normally investigate decisions on tax assessments and decisions to impose tax shortfall penalties as these are limited to the provisions in the TAA 1994.

Returning to the critical issue of the position of the digitally challenged. Taxpayers can go to public libraries to use computers, provided they are able to get there and are capable of using a computer. Thus, there remains considerable scope for enhancing tax services for the digitally challenged, including the elderly, disabled and those without effective broadband access. IR should be playing a significant role, supported by government as a whole, plus charitable and other

voluntary agencies. Instead this has been largely left to non-government organizations. InternetNZ is pushing for closure of the digital divide in NZ. InternetNZ (2018, 6, emphasis added) describes this as follows:

Digital divides are the gaps between those who:

- a) have access to the Internet, and those who do not
- b) can afford an Internet connection and devices, and those who can not
- c) have the capability and skills to use the Internet, and those who do not
- d) are not limited by impairment online, and those who are
- e) have the capability, motivation and trust to use the Internet to enrich their lives and their social connections, and those who do not.

Traditionally the digital divide has been defined as whether someone has Internet access or not, but *as the Internet matures, we need to consider all the factors required for people to meaningfully use and benefit from the Internet.*

Those most at risk (InternetNZ, 2018, 7, emphasis added) are:

- *people living in rural communities*
- *people with disabilities*
- migrants and refugees with English as a second language
- families with children in low socio-economic communities
- Māori and Pasifika Youth
- offenders and ex-offenders
- *seniors and older New Zealanders.*

Many of the at-risk groups identified above include people who experience multiple obstacles to full digital participation. Specifically InternetNZ is calling for a nationwide target of universal access for all New Zealanders. However, it is extremely unlikely that there will be one national solution to NZ's digital divides, necessitating that a framework be created. InternetNZ (2018, 2, emphasis added) states:

This paper does not look at how digital enablement can improve outcomes for government or for businesses. Rather, it focuses on what *digital divides exist and how addressing them can empower New Zealanders to be able and willing to participate fully in the digital world.*

In terms of current barriers to digital inclusion, these include: cost, a range of barriers to physical access, low motivation, resilience to setbacks, mixed levels of skills, a lack of trust or safety online and insufficient capacity (Elliott, 2018). Specifically, Elliott (2018, 5, emphasis in original) observes:

Out of the Maze shows that it is critical to work with communities who are affected by digital exclusion and keep their voices heard.

This means:

- enabling community led development - collaborate, co-design, bring everyone on the journey;
- building capacity of communities to solve their own problems;
- understanding and hearing the voices of vulnerable New Zealanders;
- **continuing to ask the question: what does it mean to be a digital society?**

Overall Elliott (2018) concludes that her research points to a need to remove the broader social and economic barriers in society, so as to create more favorable conditions for actions that are designed specifically to increase digital inclusion. While not specifically relating to tax, these factors are relevant to taxpayers who are digitally challenged.

The NZ Government has made a commitment to closing the digital divide by 2020. This is not far away. Furthermore, the NZ government has announced the development of a blueprint for digital inclusion, with the support of the recently appointed Digital Economy and Digital Inclusion Ministerial Advisory Group (see: <https://www.beehive.govt.nz/release/digital-advisory-group-be-established>). One of the questions posed to this group was “what will it take to close digital divides by 2020?” To achieve this goal will require capability, access, motivation and trust. Given the immensity of the issues raised in the research, and the reality of where NZ is at present, this suggests the goal will not be achievable by 2020. Many taxpayers will remain digitally excluded

and face severe challenges to interact with IR as BTP marches on. This clearly indicates a further erosion of NZ taxpayers' rights.

Conclusions, limitations and future research

After working through the discussion in this paper one might be left with the feeling that the outlook is bleak for many taxpayers in NZ, especially those that are digitally challenged. The natural consequence would be a further erosion of taxpayers' rights. In some respects this would be an accurate assessment but it needs to be tempered by the political and policymaking environment in NZ. Overall NZ is one of the least corrupt countries in the world, with a neutral and highly effective public service. Politics is much less partisan than in other countries, such as the United States of America (USA). IR, in particular, does seek to assist taxpayers to get their taxes right and provide good customer support. However, the challenges to taxpayer rights really emerge when there is a dispute over a taxpayer's tax liability; then the unlevel playing field is felt with the taxpayer's immense challenge to successfully counteract IR's view/decision. One positive development is the potential contribution of the TWG (and more importantly the Secretariat's report) recommending further protection for taxpayers. The Government's response to the recommendations is due in April 2019. It would be ill advised to 'hold one's breath' for significant change given the immense influence that IR will have to downplay the recommendations.

BTP is drawing attention to another area where taxpayers' (and for that matter wider society's) rights are being threatened, namely where they are digitally challenged and will be almost solely dependent on having effective broadband access and personal capability to effectively interact with IR. Without this capability, they will be forced to acquire the service of others (usually for a fee) or be left unaware of their entitlements. Fear of IR will remain, and perhaps grow, as BTP takes on the overall social policy portfolio. Behind all of this remains the risk of (partial) failure of BTP from a technical/systems perspective.

To respond to the question posed near the commencement of this paper: *Is BTP likely to enhance taxpayers' rights with respect to meeting their obligations and interacting with IR?* For those taxpayers who are in the at-risk groups (including the digitally challenged), as it stands their

position will not be improved by BTP, and in fact may be made worse. The expected failure of the NZ Government to close the digital divide by 2020 exacerbates the situation.

There are a number of limitations to the arguments put forward in this paper. The first limitation stems from the fact that it is an individual country case study whose findings may not be generalizable to other jurisdictions. This limitation is in part reduced through the focus being on the digitalization of tax and taxpayers rights (including those taxpayers that are digitally challenged), which are prevalent issues in many other jurisdictions. Furthermore, the perspective taken is that of an ‘outsider’, reliant upon the level of publicly released data and findings from internally conducted research. While this situation creates a semblance of independence, the assertions made may be subject to challenge if currently unpublished data is made publicly available. In addition, the perspective taken in this paper is one that challenges the attitudes and methods of IR, pursuing an outcome where a more balanced approach is taken with respect to taxpayers’ rights.

In terms of future research, the choices are abundant. Within a NZ context, a follow up review could be undertaken once BTP is fully implemented. Questions that could be asked include: Has BTP achieved its goals? Has it avoided the risks raised in this paper and elsewhere? Has NZ closed the digital divide? From a wider perspective, case study comparisons with other jurisdictions could be undertaken, including those that are digitalizing their tax administration. Such jurisdictions could be developed or developing/emerging countries. Furthermore, other theoretical lens could be applied, such as critical theory.

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Appendix: IR: The Business Transformation Road Map



